



Paper No. 34

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SEP 02 2003

OFFICE OF PETITIONS

In re Application of
Shirwan Alpasha Al Bahdaini
Application No. 09/582,634
Filed: September 13, 2000
Title: SHIRWO SYSTEM (A NEW
INTERNAL COMBUSTION POWER SYSTEM)

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:
: DECISION ON PETITION
: and
: NOTICE OF ABANDONMENT
:

This is in response to the communication filed August 4, 2003, by pro se applicant Shirwan Alpasha Al Bahdaini. Applicant states that this is a "request to appeal for time extension on the prosecution of this application." Applicant requests, in effect, that the statutory period for reply to the final rejection mailed January 23, 2003 be extended beyond six months. Since there is no provision in the United States Patent and Trademark Office (Office) regulations providing for the relief requested, the communication filed on August 4, 2003, is properly treated as a petition under 37 CFR 1.182.

As so considered, the petition is dismissed, because it was not accompanied by the \$130.00 petition fee set forth in 37 CFR 1.17(h).

While the petition is dismissed, it is appropriate, in this particular case, to comment on the merits of applicant's request.

On January 23, 2003, the Office mailed a final Office action in the above-identified application. A review of the record reveals that applicant has previously requested an extension of time beyond the six-month statutory period for reply. In response to applicant's request received May 23, 2003, by letter mailed May 28, 2003, Supervisory Patent Examiner (SPE) Thomas Denion advised applicant that "The law sets a 6-month maximum statutory period for response to an office action." SPE Denion clearly stated that "this office has no authority to waive a law." Furthermore, in response to applicant's letter received July 22, 2003, by letter dated July 23, 2003, SPE Denion, advised applicant that:

The six month period to respond to an office action is set by Statute. This office nor anyone working therefor has the authority to waive a Statute. Accordingly, if no response is received by this Office by 7-23-03, this case will be held abandoned.

Examiner Denion is absolutely correct.

35 U.S.C. 133 provides that:

Upon failure of the applicant to prosecute the application within six months after any action therein, of which notice has been given or mailed to the applicant, or within such shorter time, not less than thirty days, as fixed by the Director in such action, the application shall be regarded as abandoned by the parties thereto, unless it be shown to the satisfaction of the Director that such delay was unavoidable.

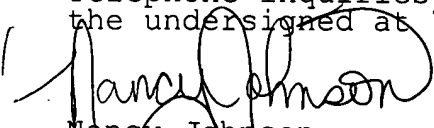
(Amended Nov. 29, 1999, Public Law 106-113, sec. 1000(a)(9), 113 Stat. 1501A-582 (S. 1948 sec. 4732(a)(10)(A)).)

This law means that all applications shall go abandoned at the end of six months, if the Office has not received a timely and proper reply to the outstanding Office action. This law does not allow the Director (or anyone else, including myself or SPE Denion, acting pursuant to the delegation of the Director) to extend this period for any reason. The language "unless it be shown to the satisfaction of the Director that such delay was unavoidable" means that after abandonment, an applicant may revive the application if it is shown to the satisfaction of the Director that the delay in filing an acceptable reply was unavoidable. Accordingly, any petition under § 1.182 requesting that the statutory period for reply be extended beyond six months shall be dismissed.

It is further noted that in this case, a timely reply to the Office action was received on July 21, 2003. However, as stated in the advisory action mailed August 6, 2003, the reply was not proper; it was determined by the examiner not to place the application in condition for allowance. Accordingly, the instant application became abandoned on July 24, 2003.

Applicant may seek revival of this application by filing a petition to revive under § 1.137(a) or (b). To be grantable, this petition must include, among other things, a proper reply to the final rejection. Such a proper reply must be either (1) a Notice of Appeal (and fee required by law), (2) an amendment that *prima facie* places the application in condition for allowance, (3) the filing of a continuing application, (4) a request for continuing examination under § 1.114, or (5) if applicable, a § 1.129(a) submission. Copies of the forms used to file a petition under § 1.137(a) or (b) are enclosed.

Telephone inquiries related to this decision may be directed to the undersigned at 703-305-0309.


Nancy Johnson
Petitions Attorney
Office of Petitions

Enclosures: Forms PTO/SB/64 and PTO/SB/61